

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Dias, <i>et al.</i>	Conf. No.:	4341
Serial No.:	09/925,353	Art Unit:	2151
Filing Date:	08/09/2001	Examiner:	Divecha, Kamal B.
Title:	SYSTEM AND METHOD FOR ENHANCING LOAD CONTROLLING IN A CLUSTERED WEB SITE	Docket No.:	FR919990105US1 (IBMR-0130)

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Commissioner for Patents
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant respectfully requests a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicant submits that the above-identified application is not in condition for appeal because the Office has failed to establish a prima facie case of obviousness based on an error in facts. Claims 1 and 3-8 are pending in this application.

Turning to the rejection, in the Final Office Action, claims 1 and 3-8 are rejected under 35 U.S.C. § 102(e) as allegedly being unpatentable over Dutta (U.S. Patent No. 6,546,423 B1), hereafter “Dutta.” Claim 2 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Dutta in view of Starnes *et al.* (U.S. Patent No. 6,510,469 B1), hereafter “Starnes.” Claim 3 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Dutta in view of Starnes and further in view of Pavan (U.S. Patent No. 6,801,943 B1), hereafter “Pavan.” Claim 4 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Dutta in view of Starnes

and Pavan and further in view of Millard (U.S. Patent Pub. No. 2002/0087282 A1), hereafter “Millard,” and further in view of Subramanian *et al.* (U.S. Patent Pub. No. 2002/0194211 A1). Claim 5 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Dutta in view of Starnes, Pavan, Millard and Subramanian and further in view of Colby *et al.* (U.S. Patent No. 6,625,643 B1).

Applicant submits that this rejection is clearly not proper and without basis because at least one claim limitation is not met by the combined features of the references cited by the Office. As argued in the August 15, 2006 Amendment, the cited references fail to teach each and every element of independent claims 1, 7 and 8. In particular, the cited references fail to teach that wherein the any one server out of said plurality of individual servers is adapted to issue the load balancing instructions that apply to any of the plurality of individual servers. See August 15, 2006 Amendment, page 7, paragraphs 1 and 2. The Office argues in its Final Office Action that Dutta teaches the ability of a server A to send a message to a firewall instructing the firewall to reduce the amount of traffic to itself. Even assuming, *arguendo*, that the Office is correct in its contention, the example in Dutta specified by the Office indicates an ability of a server to issue a message regarding itself. However, Dutta does not teach that server A can issue a load balancing instruction that applies to server B. To this extent, Dutta does not teach that its messages directly apply to a server other than the sending server A, such as server B. As such, the Office’s example does not issue load balancing instructions that apply to *any* (but rather only *one*) of the servers in the plurality of individual servers.

As further argued in the August 15, 2006 Amendment, Dutta fails to teach each and every element of independent claim 8. In particular, Dutta fails to teach an NCS-control HTTP header that includes both directives and a filter. See August 15, 2006 Amendment, page 7, final

paragraph through page 8, first full paragraph. Rather, the header having header information that is relied upon by the Office is in the portion of Dutta that describes how a firewall filters incoming packets (i.e., from outside the network) and not in the portion that describes the message that is sent from a server (that is in the network) to the firewall. To this extent, Dutta never specifies that the message sent to the Dutta firewall to the Dutta server has an HTTP header that includes both directives and a filter. the re-rendering of Lo affects only displayed data and not a reusable software component. As such, Lo does not teach that software components that are running on the web page change, but rather only the data that is displayed is re-rendered. Furthermore, Lo also does not teach that this data has one or more configurable properties or that properties of the former data elements are retrieved from a web source file for use in the updated data.

Accordingly, the Office has failed to state a *prima facie* case of anticipation, and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution.

As further argued with respect to the rejections of dependent claims in view of Dutta in view of Pavan, in the August 15, 2006 Amendment, there is no motivation or suggestion to combine the Dutta and Pavan references. The Office asserts that the scheduler of Pavin is in the same field of endeavor as the load balancer of the claimed invention. However, the scheduler of Pavin schedules a number of tasks on a *single* machine, whereas the claimed invention is directed to distributing tasks among a plurality of machines. To this extent, the scheduler of Pavin performs, at best, a far different function and, at worst, the opposite function from that of the claimed invention. As such, there would be no expectation of success in combining Dutta with Pavin. Furthermore, as the goal of Pavan is correctly scheduling an order of task

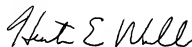
performance on a single resource, it does not solve the same problem as Dutta, i.e. to balance a plurality of resources. Thus, there is no motivation in the references themselves or in the art for combining the references.

As further argued with respect to the rejections of dependent claims in view of Dutta in view of Pavan, in the August 15, 2006 Amendment, with respect to newly amended claim 5, Applicants respectfully submit that the cited references fail to teach or suggest a share directive aimed at enabling an information sharing within all members of said plurality of individual servers and said NCS by depositing an HTTP header in the NCS that is added to all subsequent requests having a matching filter that are issued from the NCS to any server. Specifically, to the extent that the cited references teach a share directive, they do not teach or suggest that it is performed by depositing an HTTP header into requests having a matching filter that are issued from the NCS to any server.

The dependent claims are believed to be allowable based on the above arguments regarding the claims from which they depend, as well as for their own additional features.

Applicant respectfully submits that the application is not in condition for appeal. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,



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